STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW CHAPMAN,

Plaintiff-Appellee/Cross Appellant,

v

PHIL'S COUNTY LINE SERVICE, INC., PHILIP LODHOLTZ, and COUNTY LINE TOWING,

Defendants-Not Participating,

and

OSCEOLA COUNTY and MARK WARREN COOL,

Defendants-Appellants/Cross Appellees,

and

DEPARTMENT OF TRANSPORTATION,

Defendant.

UNPUBLISHED
April 19, 2007

No. 269150
Osceola Circuit Court
LC No. 03-009803-NI

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

SCHUETTE, J. (*concurring in part and dissenting in part*).

I concur in the portion of the majority opinion of my distinguished colleagues, Judges Zahra and Cavanagh, that affirms the trial court's denial of plaintiff's motion to enforce the purported settlement agreement between the parties. However, because I do not believe that the trial court erred in denying defendants' motions for summary disposition, I must respectfully dissent from the portion of the opinion reversing the trial court.

The essential question here is whether plaintiff was a "police officer" as that term is used in MCL 600.2966. I do not believe that he was. Indeed, the specific facts of this case suggest that plaintiff was not a "police officer" as that term is commonly understood. Plaintiff did wear a deputy's uniform and carry a badge, facts which comport with the common understanding of a police officer. However, plaintiff had no independent law enforcement authority and was not

permitted to refer to himself as a police officer when off-duty. The reserve deputy policy manual also provided that reserve deputies were only to be used to supplement the operation of the Osceola County Sheriff's Department, and not to "displace regular employees by performing duties, which have been traditionally done by regular employees." While plaintiff did take an oath to uphold the Michigan Constitution and United States Constitution, many people in professions other than police officers are also required to take such oaths. Nor does the fact that he took an oath to faithfully discharge the duties of a reserve deputy sheriff indicate that plaintiff was a "police officer" if the duties of a reserve deputy sheriff are not akin to those of a regularly employed "police officer." In this case, plaintiff's duties were not akin to those of a regularly employed deputy because of his lack of independent law-enforcement authority.

Accordingly, because I do not believe that plaintiff was a "police officer" as the term is used in MCL 600.2966 at the time his injuries arose, I would affirm the decision of the trial court.

/s/ Bill Schuette